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Regulatory
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Proposed Regulation Agency Background Document

Agency name	Real Estate Board
Virginia Administrative Code (VAC) citation	18 VAC 135-20
Regulation title	Real Estate Board Regulations
Action title	Amend
Document preparation date	July 28, 2003

This information is required for executive review (www.townhall.state.va.us/dbbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dbbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The purpose of the proposed action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Any other changes that may be necessary may also be considered.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under §54.1-308 or §54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory board's power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department...”

§ 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

§ 54.1-2105 provides that “The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.”

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The intent of the proposed changes in regulations is to increase fees for applicants and regulants of the Real Estate Board. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department’s operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money, but instead is funded almost entirely from revenue collected for applications, renewals, examination fees, and other fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department’s authorized special revenue appropriation.

The ability of the board to continue to process applications in a timely and accurate manner increases the level of public safety and welfare by ensuring that only those applicants that meet or exceed the requirements set forth in the statutes and regulations are granted licenses, certificates, or registrations.

The Real Estate Board has no other source of revenue from which to fund its operations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

Fees will be increased as necessary to comply with the § 54.1-113 of the Code of Virginia. Any other changes which may be necessary may also be considered.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary issue for the proposed fee increase is the Department’s statutory requirement to comply with the Callahan Act.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the

income of the regulated population should not be of a great significance compared to level of income.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

Fiscal Impact of Proposed Regulation

Summary:

The proposed regulations will increase fees for the Real Estate Board to ensure that revenues are sufficient but not excessive to cover its ongoing operating expenses.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Fiscal Impact:

	FY 2003	FY 2004	FY2005	FY2006
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: There are no one-time costs associated with the proposed regulations.

Ongoing: There are no ongoing costs associated with the proposed regulations.

Cost to Localities: None anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: Real estate brokers, associate brokers, salespersons, instructors, firms, schools, business entities and others engaged in the real estate profession.

Estimated Number of Regulators: The Department currently regulates approximately 59,400 real estate practitioners and firms.

Projected Cost to Regulators: Depending on the type of license, the cost to a new applicant will range from \$150 - \$250 per biennium, and license renewal costs will range from \$65 to \$160 per biennium.

**Financial Status and Projections
Current Fees**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulators</u>
1996-98	1,020,208	6,230,388	3,727,821	3,522,775	94.5%	52,178
1998-00	3,522,775	3,402,768	4,190,549	2,734,994	65.3%	52,236
2000-02	2,734,994	3,435,798	4,558,099	1,612,693	35.4%	54,642
2002-04	1,612,693	3,547,765	5,198,833	-38,375	-0.7%	59,400
2004-06	-38,375	3,666,077	5,699,123	-2,071,421	-36.3%	
2006-08	-2,071,421	3,728,400	6,337,425	-4,680,446	-73.9%	

Fee History

<u>Fee Type</u>	<u>1994</u>	<u>1995</u>	<u>1999 / Current</u>
Application:			
Salesperson	50	100	75
Brokers	70	115	85
Firm	100	150	125
Branch Office	50	75	65
Proprietary School	100	150	75
Business Entity	100	100	75
Instructor			100
Renewal:			
Salesperson	50	100	39
Brokers	70	115	42
Firm	100	150	65
Branch Office	50	75	38
Proprietary School	50	150	38

Business Entity			39
Instructor			50
Transfer	35	50	35
Activate	35	50	35

**Financial Status and Projections
Proposed Fees**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>
1996-98	1,020,208	6,230,388	3,727,821	3,522,775	94.5%	52,178
1998-00	3,522,775	3,402,768	4,190,549	2,734,994	65.3%	52,236
2000-02	2,734,994	3,435,798	4,558,099	1,612,693	35.4%	54,642
2002-04	1,612,693	3,547,765	5,198,833	-38,375	-0.7%	59,400
2004-06	-38,375	6,506,054	5,699,123	768,556	13.5%	
2006-08	768,556	6,616,657	6,337,425	1,047,788	16.5%	
2008-10	1,047,788	6,729,140	7,047,217	729,711	10.4%	

Fee History

<u>Fee Type</u>	<u>1994</u>	<u>1995</u>	<u>1999</u>	<u>Proposed Fees</u>
Application:				
Salesperson	50	100	75	150
Brokers	70	115	85	190
Firm	100	150	125	250
Branch Office	50	75	65	190
Proprietary School	100	150	75	190
Business Entity	100	100	75	190
Instructor			100	190
Renewal:				
Salesperson	50	100	39	65
Brokers	70	115	42	80
Firm	100	150	65	160
Branch Office	50	75	38	90
Proprietary School	50	150	38	90
Business Entity			39	90
Instructor			50	75
Transfer	35	50	35	60
Activate	35	50	35	60

Expenditures by Type

	<u>1996-98</u>	<u>1998-00</u>	<u>2000-02</u>	<u>2002-04</u>	<u>2004-06</u>
Board Expenditures	1,696,614	745,999	714,985	863,601	946,707
Board Administration		881,462	967,016	1,092,653	1,197,800
Exams	6,820	22,645	25,830	28,654	31,411
Enforcement	712,935	823,597	1,073,763	1,121,547	1,229,475
Legal Services		206,157	169,633	222,133	243,509
Information Systems	569,257	512,804	552,878	629,935	690,554
Facilities	273,604	524,940	520,735	618,108	677,590
Agency Admin	411,724	462,436	571,294	611,047	669,849
Other/Transfers	56,868	10,511	8,360	11,155	12,228
	<u>3,727,822</u>	<u>4,190,551</u>	<u>4,604,494</u>	<u>5,198,833</u>	<u>5,699,123</u>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Callahan Act requires that the Board’s fees be sufficient to cover its expenses so no alternatives exist which would allow the Board to remain in compliance with the requirements of the Callahan Act.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comment was received.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These fee increases are not anticipated to have any significant impact on Virginia's families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Adjust fees in: 18 VAC 135-20-80, 18 VAC 135-20-120, 18 VAC 135-20-140, and 18 VAC 135-20-370